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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

LINDA JEAN STYVE BUISSON,

Plaintiff and Respondent,

v.

NANCY DELOACH,

Defendant and Appellant.

C083926

(Super. Ct. No. MCV0059951)

Plaintiff Linda Jean Styve Buisson and defendant Nancy DeLoach are sisters. They, along with Nancy's husband Craig,¹ entered into an agreement for the DeLoaches to place a moveable dwelling on Linda's real property and for Linda to loan \$100,000

¹ We will refer to individuals by their first names for clarity.

to the DeLoaches for purchase and placement of the moveable dwelling. The DeLoaches stopped making payments on the loan and attempted to permanently affix a manufactured home to the property. Because the DeLoaches did not make payments, Linda defaulted on her mortgage.

Linda filed a complaint seeking declaratory relief that she is the sole owner of the real property and the manufactured home, and asking the trial court to quiet title. The trial court entered judgment in Linda's favor, and Nancy appeals. Craig did not file a notice of appeal from the judgment and has not appeared in this appeal.

Nancy now contends (1) Linda's contract-based action is barred by the statute of limitations, (2) the trial court misinterpreted the loan agreement and granted relief beyond the terms of the agreement, (3) the loan agreement is unenforceable because the condition precedent to Nancy's duty to make payments never occurred, (4) the trial court's conclusions are inconsistent with applicable law, and (5) the trial court failed to apply Nancy's affirmative defenses, including forfeiture, anticipatory repudiation, and rescission.

Finding no merit in the contentions, we will affirm the judgment.

BACKGROUND

The record in this case consists of a clerk's transcript and a settled statement; there is no reporter's transcript. In the trial court, Nancy filed a proposed statement on appeal and Linda requested amendments. The trial court adopted Nancy's proposed statement after incorporating Linda's amendments and making additional changes. Our description of the background for this case is derived from the clerk's transcript (including exhibits) and the settled statement. Because the factual allegations in the parties' complaint, answer, and trial briefs were not necessarily established at trial, we do not reference them.

In October 2007, Linda purchased five acres of real property in Placer County for \$700,000. She made a down payment of \$144,000 from her own funds, and she obtained bank financing for the remainder of the purchase price.

In January 2008, Linda entered into an agreement with the DeLoaches. Nancy drafted the loan agreement. Linda agreed to loan the DeLoaches, or to make available to them, \$100,000 for purchasing and installing a dwelling for the DeLoach family on Linda's property. The term of the loan was 10 years, and the interest rate was 8.5 percent annually. The DeLoaches agreed to pay \$1,239.86 per month on the loan, plus \$260.14 per month to offset Linda's property tax and homeowner's insurance expenses, for a total monthly payment of \$1,500.

The agreement further provided: "Upon satisfactory completion of the 10 year term, [the DeLoaches] will hold equity . . . in the property valued at \$100,000. Dwelling must remain moveable until debt is paid in full or property on which it is situated is separately dividable. [¶] It is further agreed that [the DeLoaches] will be participating in an additional 1/10 share of future equity growth . . . in the Property to be realized upon the anniversary date of 10 years after habitation of dwelling and only upon satisfactory performance and completion of the loan. This percentage will be based on realized net profit by [Linda] upon sale of property or valuation of property as decided by [Linda] at that time."

The agreement provided for termination of the agreement as follows: "In the event of [the DeLoaches'] death or divorce and potential early termination of this contract, [the DeLoaches'] Equity will be valued at the amount of principle paid on the loan at that time. This Equity cannot be realized by [the DeLoaches] prior to termination of the original 10 year loan term. Should this contract terminate by this means, ownership of all dwelling related structures will be transferred to [Linda] as security against remaining monthly loan payments."

Finally, the loan agreement provided: “It is also understood between the parties that unforeseen events can occur which would require a modification of this agreement. Both [Linda] and [the DeLoaches] agree to negotiate a solution which is in the best interest of all parties involved.”

Linda applied to the county to install a temporary mobile home on the property. The DeLoaches purchased a manufactured home using loan proceeds. The bill of sale reflected that it was sold to Linda together with Craig and Nancy, although the DeLoaches were the only signatories as buyers. The DeLoaches made improvements to the real property to accommodate the manufactured home and placed the manufactured home on the real property. The manufactured home was not firmly bolted to a foundation, but instead sat on piled-up cement blocks.

Unknown to Linda, the DeLoaches tried to get approval to permanently affix the manufactured home to the property rather than leave it moveable. Even though the DeLoaches obtained a building permit and applied to permanently affix the manufactured home using form HCD 433A (Health & Saf. Code, § 18551), no certificate of occupancy or other approval was ever obtained for the manufactured home. Linda recorded a notice that the county approved construction of a second dwelling on the property, but the notice did not establish that the dwelling would be permanently affixed to the property.

The DeLoaches made full payments according to the agreement from May 2008 to March 2013. From April to July 2013, their payments ranged from \$550 to \$900, and the DeLoaches made no payments after July 2013. In all, they made full payments for four years, eleven months, and they made partial payments for an additional four months. As of December 2013, Linda reported that the DeLoaches owed \$65,099.99 on the loan.

In November 2013, the DeLoaches sent a notice to Linda rescinding the loan agreement, asserting Linda had placed the real property for sale and rendered performance of the agreement impossible. Linda acknowledged receipt of the notice but denied the DeLoaches had legal authority to rescind the loan agreement. Linda

eventually defaulted on the loan she obtained to purchase the real property. But she alleged in her complaint that the DeLoaches recorded a copy of the parties' original loan agreement, which placed a cloud on Linda's title and prevented closure of a short sale by Linda. While these allegations are not part of the facts established at trial, they reveal the basis of this action for declaratory relief and to quiet title.

In December 2013, Linda filed an action against the DeLoaches asserting three causes of action: (1) declaratory relief, (2) quiet title, and (3) injunctive relief. Linda sought a declaration that she is the sole owner of the real property and the manufactured home. She also sought judgment quieting title with a finding she is the sole owner of the real property and requiring the DeLoaches to release the recording of the loan agreement.

The action was tried to the trial court as factfinder, with the parties representing themselves. There was no court reporter present, and the parties did not request a statement of decision. The trial court ruled Linda was the sole owner of both the real property and the manufactured home and the DeLoaches failed to establish a basis for rescission of the loan agreement. The trial court quieted title to the real property in favor of Linda and ordered the DeLoaches to remove all clouds from Linda's title. The trial court entered judgment based on its decision.

After the trial court entered judgment, Nancy filed a notice of appeal.

DISCUSSION

I

Nancy contends Linda's action is contract-based and is barred by the applicable statute of limitations. She claims the trial court's declaratory and quiet title relief was based on the DeLoaches' failure to register the manufactured home, and thus is subject to the four-year limitations period for actions on a contract. (Code Civ. Proc., § 337, subd. (a).) Nancy argues she and her husband breached the agreement in May 2008 by not registering the manufactured home as personal property, and, therefore, an action filed in December 2013 exceeded the four-year limitation.

Nancy's argument lacks merit. The loan agreement does not address registration of the manufactured home as personal property. Thus, Nancy fails to establish that the failure to register the manufactured home breached the loan agreement. It follows that there is also no showing that the DeLoaches were obligated to register the manufactured home by a particular deadline.

The period for filing an action does not begin to run until after a party has stopped performing on the contract. (*McCaskey v. California State Auto. Assn.* (2010) 189 Cal.App.4th 947, 958.) Here, the parties performed, at least partially, under the agreement until at least July 2013, when the DeLoaches made their last partial payment on the loan. Nancy has not established there was a breach in 2008 and she has not established a basis to conclude that Linda's action is barred by applicable statutes of limitation.

II

Nancy next contends the trial court misinterpreted the loan agreement and granted relief beyond the terms of the agreement. Among other things, Nancy makes statements about the intent of the parties to the contract for which she provides no support in the record. We disregard those unsupported statements and consider only what is in the record, meaning the clerk's transcript and settled statement. (Cal. Rules of Court, rule 8.204(a)(1)(C); *Warren-Guthrie v. Health Net* (2000) 84 Cal.App.4th 804, 808, fn. 4, disapproved on another point in *Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376, 393, fn. 8.)

Nancy assumes the trial court found, based on its misinterpretation of the contract, that Linda had a security interest in the manufactured home; Nancy further contends the trial court improperly enforced that security interest to award the manufactured home to Linda. But without a reporter's transcript or a statement of decision, we do not know what reasoning the trial court employed to award Linda full ownership of the manufactured home. Nancy fails in her burden to present an adequate record for us to

review her contention, and therefore we must presume the trial court's ruling is correct. (*Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1200-1201.)

In addition, Nancy argues the loan agreement did not require the DeLoaches to register the manufactured home as personal property, and the trial court erred in so determining. We have already concluded that the loan agreement did not require the DeLoaches to register the manufactured home as personal property, but Nancy fails to establish that the trial court made an erroneous contrary determination.

Describing allegations in Linda's complaint as "findings," Nancy challenges them as unsupported by the loan agreement. However, the allegations in the complaint, by themselves, do not constitute trial court findings. On this limited record, Nancy has not established that any actual trial court findings are incorrect.

III

Nancy contends the loan agreement is unenforceable because the condition precedent to her duty to make payments never occurred.

The loan agreement provided: "Payments will begin the first day of the month that the dwelling is approved for habitation." Nancy claims a dwelling is not approved for habitation until a certificate of occupancy is obtained, which never happened in this case.

Linda counters that Nancy is precluded from raising this condition-precedent issue because Nancy did not designate this issue in her notice that she would proceed by settled statement. Rule 8.137(d)(1) of the California Rules of Court states: "If the condensed narrative . . . covers only a portion of the oral proceedings, the appeal is then limited to the points identified in the statement unless the reviewing court determines that the record permits the full consideration of another point or, on motion, the reviewing court permits otherwise." Here, the condensed narrative filed by Nancy did not cover all oral proceedings. And Nancy did not include the condition-precedent issue in any statement of her issues on appeal. Because Nancy did not give Linda notice that she would assert

this issue on appeal and allow Linda the opportunity to recount oral proceedings pertinent to that issue, Nancy may not now rely on the contention. (*Marogna v. Mitchell* (1951) 104 Cal.App.2d 799, 805-806.)

In her reply brief, Nancy argues her summary of the oral proceedings covered all the proceedings. She quotes her statement that “[o]ral testimony did not differ from what is stated in writing throughout the various documents filed in the case.” But she does not cite to any portion of the appellate record -- not even the written documents -- in which she discussed the condition-precedent issue. She also quotes the trial court’s order certifying the settled statement: “The court hereby certifies this statement on appeal as a complete and accurate summary of the trial court proceedings in this action.” We interpret this to mean the settled statement was complete as to the issues covered. Under the circumstances, Linda was not given adequate notice of the condition-precedent issue.

In any event, even if approval for habitation had been a condition precedent to payment, the DeLoaches began making payments on the loan agreement before they even bought the manufactured home, they lived in the manufactured home without a certificate of occupancy, and instead of pursuing the approval to place a moveable home on the property, the DeLoaches, unknown to Linda, abandoned that effort and sought to have the manufactured home permanently affixed to the property. The trial court may have relied on these details to excuse the condition precedent. (See *Doryon v. Salant* (1977) 75 Cal.App.3d 706, 712-713; *City of Hollister v. Monterey Ins. Co.* (2008) 165 Cal.App.4th 455, 490.)

IV

Nancy further contends the trial court’s conclusions are inconsistent with applicable law. She appears to claim the trial court concluded the manufactured home was personal property instead of real property, leading to the erroneous award of the property to Linda. Nancy asserts the home was real property because it was attached to a foundation.

The settled statement does not support Nancy's factual assertion that the manufactured home was permanently affixed to the real property. According to the record, the manufactured home was never permanently affixed to a foundation; the process for permanently affixing the manufactured home to a foundation and obtaining a certificate of occupancy was never completed, even if the DeLoaches, without Linda's knowledge or acquiescence, obtained a building permit to do so.

In any event, Nancy does not show that the trial court was bound to enter judgment in her favor even if the manufactured home was real property. It is not enough to show the trial court erred in its reasoning; an appellant's must also show that the appellant was entitled to judgment based on the proper reasoning. (Cal. Const., art. VI, § 13; *ASP Properties Group, L.P. v. Fard, Inc.* (2005) 133 Cal.App.4th 1257, 1268 [we review judgment not reasoning of trial court].)

V

Finally, Nancy contends that in its consideration of her affirmative defenses, the trial court failed to uphold equitable doctrines and principles involving forfeiture, anticipatory repudiation, and rescission.

As discussed above, an appellant who relies on a condensed narrative of the oral proceedings that covers only a portion of the proceedings is limited to the points identified in the statement unless we determine the record permits full consideration of the issue raised on appeal. (Cal. Rules of Court, rule 8.137(d)(1).) Here, Nancy raises three issues which she characterizes as equitable doctrines and principles: forfeiture, anticipatory repudiation, and rescission. Our review of her proposed statement on appeal, however, does not reveal any notice that Nancy would raise issues of forfeiture, anticipatory repudiation, or rescission on appeal. Her settled statement does not lend itself to full consideration of these issues. Nancy is therefore precluded from asserting them.

Moreover, Nancy's arguments with respect to forfeiture and rescission lack sufficient citations to supporting legal authority. She provides no authority for the proposition that the trial court's judgment should be reversed because it resulted in forfeiture of her interests. She also provides no authority for the proposition that she was entitled to rescind the loan agreement. These arguments are forfeited because, even if we credit the facts Nancy presents concerning these issues of forfeiture and rescission, she provides no authority for us to conclude the trial court's judgment was improper. (Cal. Rules of Court, rule 8.204(a)(1)(B); *Estate of Cairns* (2010) 188 Cal.App.4th 937, 949.)

Nancy cites a single case for the anticipatory repudiation argument, but it is insufficient to support her claim on these facts. Nancy claims Linda anticipatorily repudiated the loan agreement by defaulting on her mortgage and starting short-sale proceedings after July 2013, which was still within the term of the loan agreement between the parties. The problem with this argument is that the DeLoaches had already breached the loan agreement by July 2013: they started making only partial payments on the loan in April 2013 and attempted to have the manufactured home permanently affixed to the property.

To rely on the other party's anticipatory breach of the contract as an affirmative defense, the nonbreaching party must establish that it had the ability to perform on the contract. (*Ersa Grae Corp. v. Fluor Corp.* (1991) 1 Cal.App.4th 613, 625.) Here, the DeLoaches stopped making full payments on the loan agreement in April 2013, representing to Linda, in the words of the settled statement, "their inability and refusal to pay any amount greater than \$800 per month going forward." Nancy's anticipatory repudiation argument is therefore without merit because she was unable to abide by the terms of the loan agreement.

DISPOSITION

The judgment is affirmed. Linda is awarded her costs on appeal. (Cal. Rules of Court, rule 8.278(a).)

/S/
MAURO, J.

We concur:

/S/
BLEASE, Acting P. J.

/S/
RENNER, J.